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COMMITTEE ON APPLICATIONS FOR REVIEW OF
ADMINISTRATIVE TRIBUNAL JUDGEMENTS
Thirty-eighth session
Application No. 69

ADMINISTRATIVE TRIBUNAL JUDGEMENT NO. 519: KOFI AGAINST THE SECRETARY-GENERAL OF THE UNITED NATIONS

Report of the Committee

Rapporteur: Mr. Michael WOOD (United Kingdom of Great Britain and Northern Ireland)

INTRODUCTION

1. At its thirty-eighth session, the Committee on Applications for Review of Administrative Tribunal Judgements, established under article 11 of the statute of the Administrative Tribunal, considered the application of Mr. Kofi for review of Administrative Tribunal Judgement No. 519 - Kofi v. the Secretary-General of the United Nations;

2. Meetings of the Committee were held on 9, 10 and 11 December 1991.

I. COMPOSITION OF THE COMMITTEE AND ORGANIZATION OF THE SESSION

3. The Committee, under paragraph 4 of article 11 of the statute of the Administrative Tribunal, is composed of the Member States, the representatives of which have served on the General Committee of the most recent regular session of the General Assembly (forty-sixth session), namely, at this time: Australia, Belize, Botswana, China, Ecuador, France, Guinea, Honduras, Ireland, Italy, Libyan Arab Jamahiriya, Malaysia, Mozambique, Myanmar, Oman, Poland, Qatar, Saint Lucia, Saudi Arabia, Thailand, Togo, Tunisia, Ukraine, United Arab Emirates, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America and Zaire.

4. At its first meeting, on 9 December 1991, the Committee elected the following officers:

Chairman: Mr. Pedro Comissario Afonso (Mozambique)

Rapporteur: Mr. Michael Wood (United Kingdom)

II. THE APPLICATION BEFORE THE COMMITTEE AND ITS CONSIDERATION

5. On 30 September 1991, the Secretary of the Committee received an application from Mr. Kofi requesting a review of Judgement No. 519 rendered by the United Nations Administrative Tribunal on 29 May 1991 in the case of Kofi against the Secretary-General of the United Nations. In accordance with paragraph 1 of article III of the rules of procedure of the Committee, the application, which had been submitted in English, was translated into the other languages of the General Assembly. Thereafter, on 4 November 1991, in accordance with the same rules of procedure, the application was communicated in the form of a document (A/AC.86/R.211) to all members of the Committee, as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of the judgement of the Administrative Tribunal (AT/DEC/519).

6. Written comments of the respondent, submitted with respect to the application of Mr. Kofi in accordance with paragraph 1 of article V of the rules of procedure of the Committee, were circulated to all members of the Committee in document A/AC.86/R.212.

7. The Committee considered the application of Mr. Kofi at its two closed meetings held on 9 and 10 December 1991.

8. After members of the Committee had presented their views on the application of Mr. Kofi, they were invited to decide whether or not there was a substantial basis for the application in respect of the following three grounds set forth in article 11 of the statute of the United Nations Administrative Tribunal and referred to in the application:

(1) Has the Tribunal failed to exercise jurisdiction vested in it?

(2) Has the Tribunal erred on a question of law relating to the provisions of the Charter of the United Nations?

(3) Has the Tribunal committed a fundamental error in procedure which has occasioned a failure of justice?

9. The decisions of the Committee with regard to these three questions were taken by vote.

10. On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had failed to exercise jurisdiction vested in it, the Committee decided, by a vote of 18 to none, with 1 abstention, that there was not a substantial basis for the application on that ground.

11. On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had erred on a question of law relating to the provisions of the Charter of the United Nations, the Committee decided, by a vote of 22 to none, with no abstentions, that there was not a substantial basis for the application on that ground.

12. On the question of whether the application had a substantial basis on the ground that the Administrative Tribunal had committed a fundamental error in procedure which had occasioned a failure of justice, the Committee decided, by a vote of 12 to 10, with 1 abstention, that there was not a substantial basis for the application on that ground.

13. In view of the Committee's negative response to the questions which had been put to it in the application of Mr. Kofi, the Committee decided that there was not a substantial basis for the application under article 11 of the statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 519 delivered by the United Nations Administrative Tribunal in the case of Kofi against the Secretary-General of the United Nations.

14. In accordance with article VIII, paragraph 4, of the rules of procedure of the Committee, the decision of the Committee with regard to the application of Mr. Kofi was formally announced by the Chairman at the meeting of the Committee, held in public on 11 December 1991.